IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5330 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHSANA NAGARPALIKA (THROUGH ITS CHIEF OFFICER–Petitioner
Versus
M/S DESAI GOVINDBHAI RAMBHAI A PARTNERSHIP FIRM, THRO. ITS & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR MD PANDYA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/11/2006

ORAL JUDGMENT

1. Mr.Prakash K. Jani, learned counsel for the petitioner and Mr.M.D. Pandya, learned counsel for the respondent No.1. None for the respondent No.2. Mr.N.D. Gohil, learned Assistant Government Pleader for State.

2. By the present petition, the petitioner seeks to challenge the order dtd.17/6/1998 passed by the Collector in CTS/Vashi/1533/1988, whereunder, certain land on deposit of Rs.42,893.41 ps. has been regularised in favour of the respondent No.1 and order dtd.3/12/1993 passed in SRD/Land/Mehsana/DU/3/1989 by the Deputy Secretary (Appeals), Revenue Department, whereunder, the revision filed by the present petitioner – Mehsana Municipality was dismissed.

3. The submission of the petitioner is that the erstwhile State of Baroda had settled certain land in favour of Mehsana Municipality, out of which part of Tikka No.2/2 admeasuring 63.54.58 sq.mtrs. was leased out by the Municipality in favour of the respondent No.1. The land was given on lease for a period of three years on 8/2/1945, but on expiry of the term, the lease was not renewed. It appears that thereafter, certain proceedings were started by the revenue department and a notice was issued to the respondent No.1. The respondent No.1 appeared before the Collector and submitted that they were in possession of the property under the authority from the Municipality and they are not in unauthorised occupation and if it is found that they are in authorised occupation, the property be settled in their favour. The Collector without issuing any notice to the Municipality or without hearing the Municipality or without deciding the

title of the parties, or without any inquiry as to who was the owner of the property, allowed the application of the respondent No.1 and directed that on payment of above referred amount of Rs.42,893.41 ps., the land be settled in favour of the respondent No.1. The said order came to be challenged by the petitioner before the Deputy Secretary (Appeals), who, by his impugned order, has dismissed the revision.

4. Mr.Jani, learned counsel for the petitioner submits that the land falling within the Municipal area, ordinarily, would belong to the Municipality and if somebody raises a dispute that the land does not belong to the Municipality, then he will have to prove his title. According to him, title deeds would prove the fact and in any case, where certain land is settled by the erstwhile State, then the property would belong to the Municipality. According to him, once the land was leased out by the present petitioner to the respondent No.1, then a third party could not enter upon the scene and settle the dispute in favour of the respondent No.1. His submission is that the lessee or licensee in possession would always be answerable to the lessor or licensor, because, the lessee or licensee claims his rights through the person who has put him in possession. According to him, if the Collector was of the opinion that the land did not belong to the Municipality, then the Collector was obliged to issue a notice to the petitioner,

give an opportunity to the petitioner and after hearing the parties, the Collector could only decide the matter.

5. Mr.N.D. Gohil, learned AGP for respondent No.2 - State fairly conceded that the Collector, before passing the order, did not make any inquiry, rather no notice was issued to the Municipality.

6. Mr.M.D. Pandya, learned counsel for the respondent No.1 (the person in possession) submits that after notice was received from the Collector's office, they informed the authorities that they have taken the land in their possession from the Municipality and in any case, if the respondent No.1 is found to be a person in irregular or illegal occupation, then the same be regularised. He submits that he never challenged the title or authority of the Municipality.

7. So far as the issuance of a notice by the Collector to the present respondent No.1 and further proceedings on the same are concerned, the same would be absolutely illegal, without further notice to the Municipality, because, it was brought to the notice of the Collector that the respondent No.1 was in possession of the property through the Municipality. The respondent No.1 - allottee could never challenge nor would be permitted under the law to challenge the title of the Municipality, that is the person who had given the possession to the respondent No.1.

8. Sec.116 of the Indian Evidence Act, 1872 provides that no

tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such licence was given.

9. From the words of law, it would clearly appear that so long as the respondent is allowed to be in possession, he is answerable to the Municipality, he is obliged to pay the rent to the Municipality and the respondent would never be allowed to challenge the title of the Municipality.

10. The application for regularisation of unauthorised occupation filed by the present respondent No.1 was wholly misconceived. The said application could not be taken up for consideration by the Collector, because the respondent No.1 could not challenge the title of the person who had put him in possession. Under the law, if a licensee or a tenant wants to challenge the title of the licensor or lessor, then, he has to first surrender the possession, return back the profit and only then he would be allowed to challenge the title. The lessee or licensee cannot be allowed to draw the benefits and at the same time, challenge the title of the person who provides the benefits.

11. In view of the discussion aforesaid, the order passed by the Collector directing regularisation of the unauthorised occupation on payment of Rs.42,893.41 ps. being contrary to law, deserves to and is accordingly quashed. So far as the proceedings initiated against the present respondents are concerned, if the Collector is of the opinion that the said proceedings can still be continued, then he would be obliged to issue notice and give due opportunity of hearing to the Municipality. In case, a dispute relating to title is raised by the Municipality, then the Collector or the other competent authority would be obliged to make an inquiry into the said fact and if the finding is recorded in favour of the State, then only the Collector would be entitled to proceed further in the matter.

12. It would be open to the Municipality to recover the lease amount from the respondent No.1 for the period for which he has not paid to the Municipality. They would also be entitled to take proper steps against the respondent in accordance with law.

13. The petition is allowed to the extent indicated above. Rule is made absolute accordingly.

14. Mr.Pandya at this stage submits that the amount deposited by the respondent No.1 with the Collector, be directed tobe refunded, as the order passed by the Collector is being set aside by this Court.

15. It goes without saying that once the order passed by the Collector is set aside, then the respondent No.1 would be entitled to refund of the amount deposited by the respondent No.1 and other charges which they have paid to the State. But in any case, they would be still answerable to the Municipality.

(R.S. GARG, J.)

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